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# SENATE BILL No. 386

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3.1-24.

**Synopsis:** Venture capital investment tax credit. Specifies that a pass through entity is eligible for the venture capital investment tax credit for investments made in qualified Indiana businesses. Eliminates certain requirements that a business must meet in order to be certified as a qualified Indiana business. Specifies that the total credit amount calculated for a qualifying taxpayer for a particular taxable year counts toward the \$10,000,000 in maximum allowable credits for that calendar year, regardless of whether the taxpayer's total credit amount exceeds the taxpayer's tax liability and may be carried over to the succeeding year. Provides that if a taxpayer carries over any credit amount to the succeeding year, the amount carried over does not count toward the \$10,000,000 in maximum allowable credits for the succeeding year. Allows the department of commerce to adopt rules to limit the number of succeeding taxable years over which an unused credit may be carried forward. Provides that if the department adopts such rules, any unused credit amount remaining at the end of the allowable carry-forward period becomes available for eligible taxpayers in the next calendar year and is added to the \$10,000,000 in maximum allowable credits for that next calendar year. Provides that if a taxpayer files a return claiming a credit after the maximum amount of allowable credits has been allocated for the calendar year, the department of state revenue may, at the request of the filer, approve the claimed credit with respect to the next calendar year.

**Effective:** January 1, 2003 (retroactive).

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## Kenley, Simpson

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January 16, 2003, read first time and referred to Committee on Economic Development and Technology.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## SENATE BILL No. 386

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-3.1-24-5, AS ADDED BY P.L.192-2002(ss),  
2 SECTION 119, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: Sec. 5. As used  
4 in this chapter, "taxpayer" means an individual or entity, **including a**  
5 **pass through entity**, that has any state tax liability.

6 SECTION 2. IC 6-3.1-24-7, AS ADDED BY P.L.192-2002(ss),  
7 SECTION 119, IS AMENDED TO READ AS FOLLOWS  
8 [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: Sec. 7. (a) The  
9 department of commerce shall certify that a business is a qualified  
10 Indiana business if the department determines that the business:

11 (1) is a high growth company that:

12 (A) is entering a new product or process area;

13 (B) has a substantial number of employees in jobs:

14 (i) requiring postsecondary education or its equivalent; or

15 (ii) that are in occupational codes classified as high skill by  
16 the Bureau of Labor Statistics; United States Department of  
17 Labor; and



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- 1           ~~(C)~~ has a substantial number of employees that earn at least  
 2           one hundred fifty percent (~~+50%~~) of Indiana per capita  
 3           personal income;  
 4           ~~(2)~~ has its headquarters in Indiana;  
 5           ~~(3)~~ **(2)** is primarily focused on research and development,  
 6           technology transfers, or the application of new technology, or is  
 7           determined by the department of commerce to have significant  
 8           potential to:  
 9                (A) bring substantial capital into Indiana;  
 10               (B) create jobs;  
 11               (C) diversify the business base of Indiana; or  
 12               (D) significantly promote the purposes of this chapter in any  
 13               other way;  
 14           ~~(4)~~ **(3)** has had average annual revenues of less than ten million  
 15           dollars (\$10,000,000) in the two (2) years preceding the year in  
 16           which the business received qualified investment capital from a  
 17           taxpayer claiming a credit under this chapter;  
 18           ~~(5)~~ **(4)** has:  
 19                (A) at least fifty percent (50%) of its employees residing in  
 20                Indiana; ~~and or~~  
 21                (B) at least seventy-five percent (75%) of its assets located in  
 22                Indiana; and  
 23           ~~(6)~~ **(5)** is not engaged in a business involving:  
 24                (A) real estate;  
 25                (B) real estate development;  
 26                (C) insurance;  
 27                (D) professional services provided by an accountant, a lawyer,  
 28                or a physician;  
 29                (E) retail sales, except when the primary purpose of the  
 30                business is the development or support of electronic commerce  
 31                using the Internet; or  
 32                (F) oil and gas exploration.  
 33           (b) A business shall apply to be certified as a qualified Indiana  
 34           business on a form prescribed by the department **of commerce**.  
 35           (c) If a business is certified as a qualified Indiana business under  
 36           this section, the department **of commerce** shall provide a copy of the  
 37           certification to the investors in the qualified Indiana business for  
 38           inclusion in tax filings.  
 39           (d) The department **of commerce** may impose an application fee of  
 40           not more than two hundred dollars (\$200).  
 41           SECTION 3. IC 6-3.1-24-9, AS ADDED BY P.L.192-2002(ss),  
 42           SECTION 119, IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: Sec. 9. (a) The total amount of tax credits that may be allowed under this chapter in a particular calendar year **for qualified investment capital provided during that calendar year** may not exceed ten million dollars (\$10,000,000).

(b) Notwithstanding the other provisions of this chapter, a taxpayer is not entitled to a credit for providing qualified investment capital to a qualified Indiana business after December 31, 2008.

SECTION 4. IC 6-3.1-24-12, AS ADDED BY P.L.192-2002(ss), SECTION 119, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: Sec. 12. (a) If the amount of the credit determined under section 10 of this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to the **taxpayer's** following taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year. A taxpayer is not entitled to a carryback **or a refund of any unused credit amount.**

(b) **In determining when the credits approved under this chapter for a calendar year reach the maximum allowable amount of ten million dollars (\$10,000,000) under section 9(a) of this chapter, the department shall count toward the maximum allowable amount the total amount of the credit determined under section 10 of this chapter for a taxpayer, regardless of whether the total credit amount for the taxpayer exceeds the taxpayer's state tax liability for the taxable year and may be carried over to subsequent taxable years under subsection (a). However, the department may not count the amount carried over by a taxpayer to a subsequent taxable year toward the maximum allowable credit amount for the subsequent taxable year.**

(c) The department of commerce may adopt rules to limit the number of succeeding taxable years, following the unused credit year, over which a credit may be carried forward under this section. If the department of commerce adopts rules under this subsection to limit the number of succeeding taxable years over which a credit may be carried forward, the amount of any unused credit remaining after the final year in which the taxpayer may apply the carried over amount becomes available for credits to taxpayers in the calendar year immediately succeeding that final year and is added to the maximum allowable amount of credits under section 9(a) of this chapter for the immediately succeeding

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1 **calendar year, subject to section 9(b) of this chapter.**

2 SECTION 5. IC 6-3.1-24-13, AS ADDED BY P.L.192-2002(ss),  
3 SECTION 119, IS AMENDED TO READ AS FOLLOWS  
4 [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: Sec. 13. (a) To  
5 receive the credit provided by this chapter, a taxpayer must claim the  
6 credit on the taxpayer's state tax return or returns in the manner  
7 prescribed by the department. The taxpayer shall submit to the  
8 department, **along with the taxpayer's state tax return or returns,**  
9 proof that the taxpayer provided qualified investment capital to a  
10 qualified Indiana business and all information that the department  
11 determines is necessary for the calculation of the credit provided by  
12 this chapter.

13 (b) The department shall record the time of filing of each return  
14 claiming a credit under section 6 of this chapter and shall, except as  
15 provided in subsection (c), grant the credit to the taxpayer, if the  
16 taxpayer otherwise qualifies for a tax credit under this chapter, in the  
17 chronological order in which the return is filed in the calendar year.

18 (c) If the total credits approved under this section equal the  
19 maximum amount allowable in a calendar year, a return claiming the  
20 credit filed later in that calendar year may not be approved. **However,**  
21 **the department may, if the later filing applicant so requests,**  
22 **approve the credit claimed, in whole or in part, with respect to the**  
23 **next succeeding calendar year.**

24 SECTION 6. **An emergency is declared for this act.**

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